

Book VI.
Title XXXVIII.

Concerning the meaning of words and things.
(De verborum et rerum significatione.)

Bas. 44.3. 99; D. 50.16.

6.38.1. Emperor Antoninus to Antipatra.

It was agreed by the authorities of the law that when farms equipped for cultivation¹ were bequeathed, the oil or wine thereon, part of the products of the property, which was for sale, and products temporarily brought on to the land for the security against robbers, were no part of the legacy. 1. But you should not be unaware that wine in the storehouse, which is there for the use of the mother of the family when present on the farm, belongs to the legacy.

Promulgated August 8 (213).

6.38.2. Emperors Diocletian and Maximian and the Caesars to Rufinus.

It is settled by the authority of law that when a farm "with its equipment for cultivation" has been bequeathed or left as a trust, the steward, slaves and all things on it, which are there so that the father of the family while present thereon, or the farm itself, should be fully equipped, and which were not there temporarily only, belong to the legacy or trust. The same is true with property thereon suited to the purpose of gathering or preserving the crops. Likewise it is certain that cattle are part of a trust which are there for the purpose of furnishing manure or to graze the pasture, so that they may serve as a source of income or make the property fitter for cultivation.

Given at Sirmium October 7 (293).

6.38.3. Emperor Justinian to Julianus, Praetorian Prefect.

We ordain that the word "cautio" or "asphaleia," does not refer to giving a surety, unless that is specially stated, either in Greek or Latin. For unless a guaranty (satisdatio) or the giving of a surety (fidejussio) is specially mentioned, cautio, or cautila or asphaleia, does not refer to giving a surety, but means a simple promise merely.

Given at Constantinople March 1 (531).

6.38.4. The same Emperor to Johannes, Praetorian Prefect.

When a testator had appointed an heir or had given a legacy or trust or had provided for a manumission, or a guardianship in the following (disjunctive) manner: "Let this or that person be my heir;" or "I give and bequeath, or want to be given, to this or that person;" or "I want this or that person to be free;" or "I want or order this or that person to be guardian," it was doubted whether such (disjunctive) provision for an heir,

¹ [Blume] Fundus instructus included implements, animals and slaves necessary for cultivation, furniture of the farm-house, clothes, gold, wine and utensils of the testator (D. 33.7.12.27 and 28); domestic slaves (D. 33.7.12.35) and books and library (D. 33.7.12.34). Hunter 906, 907; and see the next law.

legacy, trust, manumission or guardian was valid, whether the right of the first occupant would be the better, whether both were the beneficiaries of the gift of bounty, and whether, in such case, one had the preference over the other or both had equal rights? Some of the jurists thought that the first person named as heir should be considered as having the first right as such, and that the second person named should be considered only as a substitute for the first. Other jurists thought that in the case of trusts, only the last person named should be the beneficiary thereof, since, when his name was stated last, that expressed the last wish of the testator. 1. Should anyone desire to treat each of their disputes separately, it would not be difficult to write a large book, in explaining the various differences of opinion, since not the jurists only, but also the imperial constitutions, to which the jurists refer, differ with each other. 1a. It has seemed best to us, accordingly, to eliminate such verbosity and to construe the conjunction "or" and "and," used copulatively as a sort of disjunctive conjunctive, calling, of course, the person named (to the inheritance, legacy, trust, manumission and guardianship), without, however, excluding the second person named therefrom. 1b. Just as, for example, the conjunction "or" is clearly used for "and" in the interdict "by force or secretly," so it must be interpreted in the same manner in all such cases providing for heirs, legacies, trusts, manumissions, and guardianships, and both persons named shall equally receive the inheritance, both shall have the legacy, the trust shall be divided between them, both shall have liberty, both shall function as guardian. 1c. In that way no one will be deprived of the benefaction of the testator, and greater protection will be provided for minors, so that while it is being doubted who should be guardian, the property of minors will not be lost in the meantime. These provisions apply only in cases where more than one person is mentioned. 2. If reference is made to one person only, and the property is, for instance, left in this manner: "I give and bequeath to him or leave as a trust to him, this or that property," the rules and provisions of the former law control, and they are in no way modified by this constitution. All of which shall apply to contracts as well. Given at Constantinople April 30 (531).

6.38.5. The same Emperor to Johannes, Praetorian Prefect.

In answer to the inquiry of the advocates of Illyria, we direct that the word "family" (familia) has the following meaning: ascendants, descendants, all near relatives, the whole family property, freedmen, patrons and slaves are included in that term. 1. And if anyone leaves a trust in his last will to his "family," without making any special mention of stated persons, not alone near relatives, but sons-in-law and daughters-in-law are also included; for it seems humane to us to have them participate in a trust, if their marriage has been dissolved by the death of the son or daughter. They cannot, however, participate therein if the son or daughter is living, for the latter take precedence over them; but as the participation is in accordance with the degree of relationship, the freedmen come after them. 2. This applies, too, if anyone gives immovable property as a legacy or trust, and prohibits its alienation, with the provision added that if the cestui que trust should violate such prohibition, his "family" should have the property. 3. In other cases, the word "family" conveys the meaning of "substance" (property)², because slaves and other things are considered as part of one's patrimony.

² [Blume] A group of persons and property belong to a certain "house."

Given October 18 (532) at Constantinople.